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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SUSIE CAREY, Plaintiff and Appellant, v. IRVINE APARTMENT COMMUNITIES, LP, et al., Defendants and Respondents.	G039074 (Super. Ct. No. 06CC02486) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Thompson, Judge. Affirmed.

Law Offices of Federico C. Sayre, Federico C. Sayre, James F. Rumm and Eric J. Hardeman for Plaintiff and Appellant.

Smith & Susson, Scott A. Smitth and Linda J. Burden for Defendants and Respondents.

Plaintiff Susie Carey sued the owner and manager of her apartment building, defendants Irvine Apartment Communities, LP (limited partnership) and The Irvine Company Apartment Communities, Inc. (corporation), respectively, alleging she was injured when the laundry room door fell off its hinges and pushed her into a wall. The trial court granted defendants' motion for nonsuit on plaintiff's causes of action for negligence and premises liability. Plaintiff appeals, contending this was error because defendants had a nondelegable duty to maintain the premises in a safe condition. We agree the limited partnership had such a duty but conclude plaintiff failed to present sufficient evidence showing the management company, as the owner's agent, breached that duty. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff lived in an apartment building owned by the limited partnership and managed by the corporation. When she and her husband became dissatisfied due to major construction near their apartment, the limited partnership offered to move them to another apartment.

An outside company recently renovated the apartment they chose and everything inside the unit was new, including the stacked washer and dryer located in a closet (the laundry room). It also installed the door to the laundry room.

Plaintiff performed a pre-move-in inspection of the apartment and had the opportunity to change anything she did not like. She had some doors on the lower level of the apartment removed and complained that the windows shook when opened, that the bathtub had rough spots, that the doorbell did not work, and that a light was either burned out or not work properly. These items were repaired and plaintiff and her husband moved in on May 18, 2004.

On June 1, plaintiff went to use the washer and dryer for the first time after moving in. When she opened the laundry room door, it detached from its upper hinge, hitting her and causing her to lose her balance and fall. She saw three screws lying on the floor in front of the door.

Plaintiff called the front office to report the incident. When asked, she said she was fine and did not want to go to the hospital. She got dressed and left the apartment.

Shortly thereafter, an apartment employee, Billy Payawahl, arrived at plaintiff's apartment in response to her call. Although he did not see a fallen door, he noticed the top hinge of the door was "cock-eyed and . . . sticking out," making it hard to open. He removed the old screws and replaced them with longer screws.

A few days later, plaintiff noticed her shoulder was bruised and was sore to the touch. An orthopedic surgeon eventually diagnosed her as having a "frozen shoulder." After three surgeries, physical therapy, and home exercises, plaintiff had a "breakthrough" in her mobility but continues to feel a "dull ache."

At the close of plaintiff's case, defendants moved for nonsuit "on the grounds that plaintiff had failed to show that defendants had notice of any defect in the subject closet door or were otherwise negligent." The court granted the motion and entered judgment for defendants.

DISCUSSION

"We independently review an order granting a nonsuit, evaluating the evidence in the light most favorable to the plaintiff and resolving all presumptions, inferences and doubts in his or her favor. [Citations.] 'Although a judgment of nonsuit must not be reversed if plaintiff's proof raises nothing more than speculation, suspicion, or conjecture, reversal is warranted if there is "some substance to plaintiff's evidence

upon which reasonable minds could differ . . . .”’ [Citation.] In other words, ‘[i]f there is substantial evidence to support [the plaintiff]’s claim, and the state of the law also supports that claim, we must reverse the judgment.’ [Citation.]” (*Wolf v. Walt Disney Pictures and Television* (2008) 162 Cal.App.4th 1107, 1124-1125, italics omitted.)

A landlord owes a duty of care to maintain the leased premises in a “reasonably safe condition.” (*Vasquez v. Residential Investments, Inc*. (2004) 118 Cal.App.4th 269, 278.) This duty is nondelegable. (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1375.) But the nondelegable duty doctrine is merely “a form of vicarious liability” (*ibid*.) under which “a landlord cannot escape liability for failure to maintain property in a safe condition by delegating such duty to an independent contractor. [Citations.]” (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 726.) It is neither a form of strict liability nor a substitute for negligence liability (*Maloney v. Rath* (1968) 69 Cal.2d 442, 446) and “does not . . . create a duty where none would otherwise exist” (*Chee v. Amanda Goldt Property Management, supra,* 143 Cal.App.4th at p. 1375, italics omitted).

“A landlord is not liable for injuries to a tenant caused by a condition on the premises which arises after the tenant has taken possession. [Citations.] However, the rule . . . is different with respect to a condition which exists at the time the property is leased to the tenant. [Citations.] . . . [A] ‘landlord at time of letting may be expected to inspect an apartment to determine whether it is safe’ and will be subject to liability for ‘those matters which would have been disclosed by a reasonable inspection.’ [Citations.]” (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1605-1606, fn. omitted.) “The implied warranty of habitability . . . gives a tenant a reasonable expectation that the landlord has inspected the rental dwelling and corrected any defects disclosed by that inspection that would render the dwelling uninhabitable. The tenant further reasonably can expect that the landlord will maintain the property in a habitable condition by repairing promptly any conditions, of which the landlord has actual or constructive

notice, that arise during the tenancy and render the dwelling uninhabitable." (*Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1205-1206, fn. omitted.) "But a tenant cannot reasonably expect that the landlord will have eliminated defects in a rented dwelling of which the landlord was unaware and which would not have been disclosed by a reasonable inspection." (*Id*. at p. 1206.) "'[A landlord's] duty is not to insure the safety of tenants but only to exercise reasonable care.' [Citation.]" (*Id*. at p. 1198.)

Here, as the owner of the property, the limited partnership owed plaintiff a nondelegable duty to put and maintain its property in reasonably safe condition and is responsible for its contractor's failure to do so. (*Srithong v. Total Investment* Co., *supra*, 23 Cal.App.4th at p. 726.) The issue is whether plaintiff presented any evidence of a breach of that duty by the corporation, as the owner's agent. We conclude she did not.

Plaintiff makes the conclusory assertion that defendants "were aware, or should have been aware of the problem in the laundry door hinge as they impliedly warranted that the apartment was safe for habitability when they delivered the . . . residence to [her]." She fails to show she presented any evidence in her case-in-chief that the door was in an unsafe condition at the time she took possession of the property, that defendants failed to perform an inspection of the property before turning it over to her, or that a reasonable inspection would have revealed the condition of the door. (See *Brantley v. Pisaro*, *supra*, 42 Cal.App.4th at p. 1605.)

In her reply brief, plaintiff responds that her testimony the accident occurred the first time she opened the laundry room door made this showing. But plaintiff and her husband had been in possession of the premises for two weeks without incident before the accident. And as defendants note, "she could not rule out that either her husband or her housekeeper had opened the door before she did." Further, she admitted that "others [had] moved her and her husband into the apartment, raising the reasonable inference that someone opened the door one or more times during move in." Alternatively, someone could have "knocked into the door when it was partially

open . . . ." (Capitalization and italics omitted.) Accordingly, her testimony alone that the accident occurred the first time she opened the door does not suffice to show a dangerous condition at the time she took possession of the property.

Moreover, such testimony fails to show the condition would have been revealed by a reasonable inspection. Plaintiff herself performed a pre-move-in inspection of the apartment and identified a number of items she wanted changed or fixed; the laundry room door was not one of them. Without evidence that a reasonable inspection would have disclosed a condition in the laundry room door that plaintiff's own detailed pre-move-in inspection did not reveal, defendants cannot be subjected to liability. (*Peterson v. Superior Court, supra,* 10 Cal.4th at p. 1206.) The mere fact an accident occurred does not prove defendants were negligent. (*Brooks v. Eugene Burger Management Corp*. (1989) 215 Cal.App.3d 1611, 1620.)

Plaintiff maintains defendants had notice of the condition because there was evidence Payawahl may have made two trips to the apartment and that the court erred in weighing the evidence. She relies on his deposition testimony that after he responded to the maintenance service request, he wrote on the form, "Do some reinforcement work on washer and dryer door hinges." When asked what door he meant, the following exchange occurred: "Answer: I'm referring to the door on the washer and dryer itself. [¶] Question: Just the door to the appliance. [¶] Answer: Yes. [¶] Question: Not the laundry room door: [¶] Answer: No." She cites another passage from Payawahl's deposition in which he testified the top hinge was jammed because the screw was loose, that he did not tell plaintiff or have any conversation with her, that he closed the laundry room door behind him after he performed his maintenance work on the washer and dryer door, and that the door closed fairly easily. Plaintiff contrasts this with Payawahl's trial testimony that when he arrived at the apartment, the washer and dryer door was hard to open and that he replaced the screws in the hinge.

Based on these passages, plaintiff concludes Payawahl must be "testifying about multiple visits, or . . . that the true set of facts is what he testified to in his deposition." The contention lacks merit.

Plaintiff admits Payawahl went to her apartment on June 1 in response to a service call from her that a door had fallen off its hinges. The record contains no evidence to the contrary. The undisputed fact that Payawahl was responding to her service call necessarily means the accident already had occurred, making the number of trips or what he fixed irrelevant.

Plaintiff also asserts her injury did not occur until June 3. The record does not support her contention. She testified she "thought it was June the 3rd, but I guess I called them on June the 1st." Additionally, the maintenance service request shows the service call was made on June 1.

In sum, "plaintiff's proof raises nothing more than speculation, suspicion, or conjecture" (*Wolf v. Walt Disney Pictures and Television*, *supra*, 162 Cal.App.4th at pp. 1124-1125) that defendants breached their duty to maintain the leased premises in a reasonably safe condition. Consequently, reversal is not warranted. Given our conclusion, it is unnecessary to address plaintiff's argument that defendants remain responsible under the nondelegable duty doctrine despite the fact someone else installed the door.

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.